

Memorandum

United States Bankruptcy Court
Eastern District of Virginia

**To: All CM/ECF Registered Users and Non-Registered
Query-Only Users**

From: William C. Redden, Clerk

Date: May 25, 2001

**Subject: Judicial Conference Approved Electronic Public
Access Fees**

1. Federal Register Notice

The Administrative Office of the U.S. Courts (AO) placed a Notice in the May 8, 2001, *Federal Register* (Vol. 66, No. 89 at 23228), which addresses the approval of electronic public access fees by the Judicial Conference of the United States (Judicial Conference).¹ As mandated by the Judicial Conference, the AO notice advises that it will begin to collect “fees for electronic public access in bankruptcy courts that have installed and are using Version One [BV1] of the new Case Management/ Electronic Case Files (CM/ECF) system, as of July 1, 2001.” A copy of the *Federal Register* Notice is appended to this memorandum.

2. Background Information

For over a decade, Congress has mandated the application by the judiciary of public access charges for electronic court data. The Judiciary Appropriations Act of 1991 (Pub.L. 101-515, Title IV, § 404, Nov. 5, 1990) provides that:

The Judicial Conference [of the United States] shall prescribe reasonable fees...for collection by the courts...for access to information available through automatic data processing equipment. These fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. The Director [of the AO], under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic public access to

¹ The Judicial Conference is the statutory policy-making body for the administration of the United States courts. The Chief Justice of the United States is the presiding officer of the Judicial Conference. 28 U.S.C. § 331.

information which the Director is required to maintain and make available to the public.

Similar provisions are contained at Pub.L. 102-140, Title III, § 303, Oct. 28, 1991, 105 Stat. 810, as amended Pub.L. 104-317, Title IV, § 403(b), Oct. 19, 1996, 110 Stat. 3854.

The judiciary originally sought funding from Congress to provide free electronic public access services through the appropriations process. Rather than appropriating funds for the electronic public access program, as noted above, Congress instead authorized and directed the Judicial Conference to prescribe fees for electronic access and allowed the judiciary to retain collected fees in order to provide this service. All judiciary electronic access technologies, such as personal computers, software, servers, phone lines and terminals, are supported entirely through fees for access to electronic case documents.

Through a variety of methods, the revenue generated from fees is the only means used to fund a full range of electronic public access services so that the judiciary can provide the public with faster, cheaper, and, in most instances, free of charge methods of obtaining court information. For example, the judiciary provides voice case information systems for bankruptcy and appellate courts at no charge. Additionally, electronic public access fees do not apply to the electronic dissemination of local court information, such as local rules, court forms, news items, court calendars, opinions designated by the court for publication, and other local court information, such as court hours, court location and telephone listings. All this information is provided free of charge, but the dissemination costs are necessarily borne by the public access user fee for electronic case documents.

At its March 2001 session, the Judicial Conference endorsed the creation of a separate Miscellaneous Fee Schedule for Electronic Public Access (EPA Fee Schedule), which, as noted above, becomes effective July 1, 2001. Fees pertaining to the EPA program cut across court lines. For this reason, the EPA fees have been removed from the Judicial Conference's miscellaneous fee schedules (28 U.S.C. §§ 1913, 1914, 1926, 1930 and 1932) and placed in an independent EPA miscellaneous fee schedule, which will apply to all federal courts.

3. July 1, 2001, Implementation of Internet Access Fee in Bankruptcy Courts With Bankruptcy Version 1 (BV1) of CM/ECF

In September of 1998, the Judicial Conference approved a fee of 7 cents per page for access to information obtained electronically through a federal judiciary Internet site. In the former CM/ECF prototype courts, including the Eastern District of Virginia, access to documents obtained in this manner, however, had been (and, until July 1, continue to be) made available free of charge. All of the former prototype courts have advised users that when the full version (BV1) of

CM/ECF is completed and implemented, the courts will be under a Judicial Conference mandate to begin charging the required fee. BV1 of the CM/ECF application for the bankruptcy courts has been developed and implementation has begun.

Accordingly, for this reason, all bankruptcy courts using BV1, including the Eastern District of Virginia, must begin charging the 7 cents per page fee as of July 1, 2001.² Item I of the new EPA Fee Schedule makes provision for this fee.

4. Application of Internet Access Fee to Litigants and Infrequent Users

There is good news to report to you concerning the application of the Internet access fee as to litigants and infrequent users. The Judicial Conference has approved two recommendations regarding the Internet access fee, as applied to the above identified classes of persons, which will become effective as of July 1, 2001, as follows:

First, as to litigants, the new provision states: “Attorneys of record and parties in a case (including pro se litigants) receive one free electronic copy of all filed documents, if receipt is required by law or directed by the filer.” (Emphasis added.) EPA Fee Schedule Item I. Thus, any person who is entitled to receive a document electronically or any person to whom electronic service is directed by the filer will receive one electronic copy of the document free of charge.

The recipient can elect to print the document or save the document to the recipient’s own computer or network to avoid future access or copying charges. When an answer to a complaint is filed and served electronically, for example, the opposing attorney will receive an e-mail containing notification that the document has been filed and a hyperlink to that document. Using the hyperlink at the time of service, the attorney then can download or print the document, or do both, at no cost. A similar procedure will apply when motions and responses to motions are served. On occasion, an attorney who has been served with a document electronically may elect not to download or print the document at the time of service. If the attorney later wishes to access the document and avoid being charged, there are public access computer terminals located at each division of the clerk’s office where all filed documents can be accessed and viewed, without cost, as has always been the case with paper documents. The Court, therefore, will continue to make “freely available” information that historically has been viewed as the public record.

A primary benefit of the judiciary’s electronic public access services is that users do not incur additional transportation and personnel costs associated with traveling to and from the clerk’s office or the costs associated with sending a courier to the courthouse to retrieve the information. An attorney has the

² District courts and courts of appeals will begin billing when their court-specific Version 1 applications are implemented, which is expected in 2002 and 2003 respectively.

convenience of being able both to access and print or download a case document not only from an office during normal working hours, but from any location at any time of the day or night. Under the “paper system,” if a document in a law firm’s case file is missing, the attorney (or paralegal or a messenger) must: (a) travel to the courthouse during business hours, (b) wait in the public access area of the clerk’s office to receive the file, (c) search the file, and (d) then wait for copies, at 50 cents per page, to be made. For most external users, the ease and cost-effectiveness of access to electronic files largely should outweigh the costs that might be incurred. The electronic access and copying fee of 7 cents per page is 86% less than the 50 cents per page fee charged for paper copies at the courthouse.

Second, the Judicial Conference approved a policy that no fee for accessing information from a judiciary Internet site is owed until an individual account holder accrues charges of more than \$10 in a calendar year. This provision benefits infrequent users.

5. Institution of New Public Services and Their Related Fees

As of July 1, 2001, the Judicial Conference has approved two new services and their related fees. They are included in the new EPA Fee Schedule as Items II and III respectively.

Item II of the EPA Fee Schedule makes provision for a 10 cents per page fee for printing copies from a public access terminal in the courthouse. Currently, the fee is 50 cents per page when copies are printed from the public access computer terminals located at each division of the clerk’s office. The current fee is the same fee for a paper copy requested at the clerk’s office counter. Monies collected from this fee will be deposited in a congressionally authorized fund that will be used to defray the cost of the judiciary’s EPA expenses. There is no cost to a user accessing and viewing information at the public access computer terminals located at each division of the clerk’s office.

Item III of the EPA Fee Schedule makes provision for a \$20 fee for searches performed by the PACER Service Center. The PACER Service Center receives numerous requests daily from individuals who do not have PACER accounts or from those experiencing equipment failure requiring the PACER Service Center to conduct searches to provide the information requested. This fee is intended to enable the PACER Service Center to recoup the costs of conducting these searches.

6. AO Electronic Fee Impact Study

As CM/ECF is deployed to all federal courts, the fee for Internet access to case data will be applicable to all external non-government users (unless an exemption from the fee is granted by the Court) as well as to federal, state and local

government agencies. The application of the mandated fee has an obvious potential impact on the everyday operations of many federal agencies and other external users. To assess that impact, and to ensure that, consistent with Judicial Conference policy, usage charges are set at the lowest possible level sufficient to fund the EPA program, the AO has begun a study of the fee's potential impact on external users. The fee impact study should be completed by June 2001.

In addition to several trustees and members of the Bar of the Court, representatives from the U.S. Trustee's office, the U.S. Attorney's office and the clerk's office, participated in a February 2, 2001, video teleconference focus group. Staff from the AO and the fee impact study contractor (PEC Solutions, Inc.) also participated in the video teleconference. There was a candid and frank exchange of views concerning the new fee structure, which also included suggestions about possible alternatives to that fee structure. (In a separate meeting held later on February 2, staff from the AO and the AO's contractor also received comments from several of the Court's bankruptcy judges.) The concern expressed to me by many external users about the structure of the impending mandated fee arrangement was made known explicitly at the video teleconference. I will keep you posted on further developments concerning this important fee impact study.

7. Granting by the Court of an Exemption to the 7 Cents Per Page Internet Access Fee

On February 5, 2001, the Court entered Standing Order No. 01-1, which exempted the trustees from the Bankruptcy Miscellaneous Fee Schedule Item (23) of 7 cents per page and set out a procedure by which the Court may consider granting other persons an exemption from that fee. Recently, the Director of the AO issued a memorandum on the establishment of the above referenced EPA Fee Schedule.

To conform the provisions of Standing Order No. 01-1 to the EPA Fee Schedule, the Court entered Standing Order No. 01-4, which:

- (a) rescinds Standing Order No.01-1;
- (b) makes provision for continuing unabated the fee exemption granted to trustees under the rescinded Order; and
- (c) makes provision for continuing unabated a uniform procedure for the Court to consider the granting of an exemption from the 7 cents per page fee prescribed in Item I of the EPA Fee Schedule "for court data obtained electronically, via the Court's Internet web site, from the public records of individual cases in the Court, including filed documents and the docket sheet." Standing Order No. 01-4, Paragraph 7. (a).

The following requirements are set out in Standing Order No. 01-4, at Paragraph 7.(a)-(c) therein:

- The party must file a motion with the Court seeking the requested exemption.
- The motion should demonstrate the basis upon which the party claims such exemption.
- The standards established by Congress are to avoid unreasonable burdens and to promote public access to such information.
- The party should demonstrate that both standards have been met before the Court will grant the requested exemption.

As set out in the Judicial Conference Advisory Notes to the EPA Fee Schedule: “Examples of persons and classes of persons who may be exempt from the electronic public access fees include, but are not limited to: indigents; bankruptcy case trustees; not-for-profit organizations; and voluntary ADR neutrals.”

An electronic version of Standing Order No. 01-4 will be placed at and linked to the Court’s ECF Home Page shortly.

8. Extract from The Third Branch on Public Access to Court Documents

Also appended to this memorandum is a copy of an extract from a recent issue of a judiciary publication, The Third Branch (Vol. 33, Number 4, April 2001). The extract provides background information on the necessity for the EPA program and provides a brief history of public access and fees from 1789 to the present.

Attachments

Notices

Federal Register

Vol. 66, No. 89

Tuesday, May 8, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Electronic Access Fees for Federal Agencies

AGENCY: Administrative Office of the United States Courts.

ACTION: Clarification.

SUMMARY: The Administrative Office of the United States Courts will begin collecting fees for electronic public access in bankruptcy courts that have installed and are using Version One of the new Case Management/Electronic Case Files (CM/ECF) system, as of July 1, 2001. Deployment is scheduled to be completed for all court types by 2005.

DATES: This policy is applicable as of July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Stickney, Chief of the EPA Program Office, (202) 502-1500.

SUPPLEMENTARY INFORMATION: As the federal judiciary moves increasingly toward using electronic case files, there has been a great deal of interest in the manner and scope of the application of public access charges for electronic court data, as mandated by Congress in the Judicial Appropriations Act of 1991 and set forth in the Judicial Conference Miscellaneous Fee Schedule (28 U.S.C. 1913, 1914, 1926, 1930, 1932). The schedule imposes a charge of seven cents per page for access to data obtained electronically from the public dockets of individual case records in the court. This charge is collected by the Administrative Office through its Electronic Public Access (EPA) program and applies largely to case data from docket sheets obtained through the Public Access to Court Electronic Records (PACER) system, although an increasing number of courts have begun providing online images of official court documents as well, to which the fee equally applies.

Recently, a small number of courts have implemented a prototype version

of the judiciary's new CM/ECF system, which permits electronic access to all case file documents, in addition to docket sheets. Access to CM/ECF has been available free of charge to all users in these prototype courts.

With deployment of the first full version ("Version One") of the bankruptcy software, the EPA program will begin administering the required seven cents per page fee in the bankruptcy courts, as of July 1, 2001. District courts and courts of appeals will begin billing when their respective Version One applications are implemented, which is expected in 2002 and 2003 respectively.

Although the access fee applies to all users, it should be noted that it will not apply to official recipients of electronic documents, i.e. those parties legally entitled to receive service, or to whom service is directed by the filer. This policy will entitle attorneys of record, as well as, in most instances, U.S. Trustees and bankruptcy case trustees, to one free electronic copy of all of the documents that they need from the case file in order to fulfill their legal responsibilities. As before, parties will still be responsible for maintaining their own files; should they fail to make a copy at the time of service, however, then any additional copy from the court will cost seven cents per page for an electronic version, fifty cents per page for paper.

As CM/ECF is deployed, the fee for Internet access to case data, which currently explicitly applies to federal agencies, has obvious potential impact on the everyday operations of many federal agencies, as well as on bankruptcy case trustees and United States Trustees. In order to assess that impact, and to ensure that, consistent with the policy of the Judicial Conference, usage charges are set at the lowest possible level sufficient to fund the program, the Administrative Office has begun a study of the fee's potential impact on external users, including government agencies. The study is expected to be completed in the first half of 2001, and the input of the federal agencies who practice in the federal courts should prove an important source of data in this endeavor.

Leonidas Ralph Mecham,
Director.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Grants To Improve Food Stamp Program Access (OMB No. 0584-0506)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, this notice invites the general public, other public agencies, and grantees referred to in this Notice to comment on the proposed information collection. The proposed collection is an extension of a previously approved collection.

DATES: Comments on this notice must be received by July 9, 2001.

ADDRESSES: Send comments and request for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305-2383 or by email at Barbara.Hallman@FNS.USDA.GOV.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program: Grants to Improve Food Stamp Program Access.

Public Access to Court Documents: Better, Faster . . . and Cheaper Than Ever Before

With the increasing presence of the Internet in today's society and the development of electronic files in the federal courts, the cost of obtaining copies of court documents is lower than any time in history.

Fees For Court Documents In Electronic Form

In 1990 the Judiciary was directed by Congress to set reasonable fees for providing remote public access to information available in electronic form. The initial fee for public access to electronic information, via a dial-in bulletin board service, was set by the Judicial Conference at \$1 per minute. In keeping with the judicial policy that public access fees be set at a level commensurate with the costs of pro-

charges for Internet and dial-up access for heavy use. Charges for light use were reduced considerably. At the same time, courts were authorized to make certain items, such as local rules and forms, opinions designated for publication, court calendars, news items, and other local information available electronically at no cost, and to exempt certain persons, such as indigents or bankruptcy case trustees, from payment of the fee.

Fees and CM/ECF

The advent of the Case Management/Electronic Case Files (CM/ECF) system, which will permit courts to receive electronic documents and to maintain electronic

copies will be available from the court for 50¢ a page, or electronically over the Internet for 7¢ a page

The availability of case information via CM/ECF and the Internet represents a dramatic increase in the level of access to public records. As always, documents will be available at the courthouse for inspection without charge, and the availability of public access terminals (which are funded from access fees) means that more than one person can examine the same document at any given time. Similarly, should a person require a copy of a court document, it will now be available without having to travel to the courthouse, and at a charge much lower than at any

A Brief History of Public Access And Fees

In the United States, three years after the establishment of the federal courts in 1789, Congress authorized clerks to charge the same fees as those charged by the state courts. For example, the cost of obtaining a copy of a document from the clerk's office of the Maryland court of appeals was set by the legislature in 1763 at nine pounds of tobacco. These fees were increased in 1799 to the amount charged in state courts plus one-third. Like their English predecessors, U.S. clerks of court received no salaries, deriving all compensation through the imposition of fees.

Although fees continued to be the major source of income for federal clerks, basing the fee schedule on practice in the states produced a lack of uniformity and wide disparities in the amount of compensation received by clerks. In 1841, Congress put a cap on the earnings of federal clerks, authorizing them to retain a maximum of \$3,500 per year for office expenses, with any excess receipts to be paid into the public Treasury.

Finally, in 1919, the concept of the self-supporting clerk was eliminated, as Congress directed that salaries and expenses of the clerk's office were to be paid from

appropriated funds and that fees for services in the clerk's office were to be set by Congress and paid into the Treasury.

In 1944, Congress authorized the Judicial Conference to set reasonable fees for miscellaneous services performed by the clerk. The following year, the Conference approved a fee of 40¢ per page for copies, the equivalent of \$3.81 today. This fee stood until 1973, when the Judicial Conference approved a fee of 50¢ a page, and a \$1 fee for a typed copy (\$1.93 and \$3.86, respectively, today). The 50¢ fee for a paper copy still applies today, along with the 86 percent lower cost for an electronic version.

viding existing services and for developing enhanced services, the per-minute fee was subsequently reduced twice, first to 75¢ and then to 60¢.

Attempting to keep pace with the digital revolution, the Judicial Conference, at its September 1998 session, set a 7¢ per page charge for Internet access to court documents, calculated to produce comparable

case files, brings improved public access to the federal courts. As documents are filed electronically, they will be provided simultaneously to attorneys of record and unrepresented parties, who can download or print and file them in whatever manner they choose. The first copy will be free to these parties, and replacement paper

time in the Judiciary's history. The development of CM/ECF, along with the Internet and the work of court staff, will improve the level of public access, while reducing access costs. The cost of copies of court documents has dropped steadily, and the advancement of technology has brought the citizen ever closer to the courthouse. 